Supreme Court, U.S.
FILED

94 882 JUL 2 9 1994

No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

KARL KLEVE

PETITIONER

v

BOARD OF GREEN TOWNSHIP TRUSTEES

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

KARL KLEVE

3077 Jadaro Ct

Cincinnati, Ohio 45248

513 451 6666

Pro se

QUESTIONS PRESENTED

1. Can the decision of the Appeals Court at Cincinnati, Ohio, be allowed to stand in Direct Opposition to the decision of theAppeals Court at Columbus, Ohio, in State v Stickles, 566 N.E.2d 688. See U.S. Supreme Court Rule 10 .1.(b).

2. Whether Respondent's removal and destruction of Petitioner's car collection was in violation of Ohio Revised Code 4513.65, par 2, and the 4th, 5th, 8th and 14th Amendments of the U. S. Constitution, depriving him of his life's collection of property without due process nor compensation.

3. Should the judgment herein appealed in amount of $64,400. be allowed as alleged costs to the Respondent for their destruction of Petitioner's car collection on 19 Mar 92, when the Order which authorized the seizure was Reversed on 21 Jun 91?

4. Should the Respondent have allowed only 7 days for removal and re-storage else-

where of 100 vehicles, 5 mobile homes and 2 garage buildings, even while Pet'r was doing his best to comply?

5. Should Respondent have been allowed to evade Default Judgment when their only excuse for not answering Petitioner's Complaint, that it was not signed, was absolutely untrue it was not only signed but the signature was notarized.

6. Should the Counterclaim by Respondent have been heard and granted when the true owner of the land was Karl Kleve, Trustee, and their attempt to join said Trustee was in violation of Ohio Rules of Civil Procedure No 14; under which such complaint"MAY...BE SERVED UPON A PERSON NOT A PARTY TO THE ACTION."Petitioner WAS a person already a party to the action.

7. Can mobile homes, buildings, etc, be entered, video taped, shown at trial, seized and scrapped, all without search warrant?

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APPENDIX 'I'

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TABLE OF CASES

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TABLE OF CONSTITUTIONAL PROVISIONS. STATUTES AND RULES:

U. S. CONSTITUTION IV, V, VIII, XIV: i.e. Security against Unreasonable Search and Seizure.

Property shall not be Taken without Fair Compensation and Due Process of Law.

Cruel and Unususal Punishment shall not be imposed.

No State shall make nor enforce any Law which Abridges the Privileges and Immunities of all the Citizens of the U. S.

There shall be no Ex Post Facto prosecution nor Interference with Peaceful Enjoyment of one's Property.

U. S. SUPREME COURT

Mathews v. Eldridge, 424 U.S,319 (76) .

OHIO REVISED CODE

O. R. C. Ann. 4501.01(F) & 4513.65 . .5.

RULES OF THE SUPREME COURT OF THE UNITED STATES, Nos 10.1.(a) & 13. .3.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

Petitioner, Karl Kleve, respectfully prays that a Writ of Certiorari Issue to Review the Judgment of the Supreme Court of Ohio entered in the above Cause 27 Apr 1994.

COUNSEL OF RECORD

Counsel for Petitioner at Trial:
MICHAEL HOHN, 229 E. Court St. Cincinnati 45202, 513 651 0003

Additional counsellor:
TIMOTHY J. DEARDORFF, 2368 Victory Parkway Cincinnati 45206, 513 872 7900.

Counsel of Record for this Appeal to be named shortly.

I Certify that this Petition is true, to the best of my knowledge and belief.

Karl Kleve

COUNTY OF HAMILTON, STATE OF OHIO:
Sworn to and subscribed before me, on Nov, 94.

Notary Public

OPINION BELOW

The Supreme Court of Ohio overruled the Petitioner's Motion for an order directing the Court of Appeals for Hamilton County to Certify its Record. No Opinion nor Grounds were given. Their Decision came down on 27 April 94, see Appendix B

Motion for Rehearing thereof was denied on 8 June 94, See Appendix . . A

Memorandum Decision and Judgment Entry by the Court of Appeals at Hamilton County was entered 1 Dec 93, see Appemdix . D

Entry Overruling Application for Reconsideration was entered 3 Jan 94, with out explanation, see Appendix . . . C

Citation, of Court of Appeals at Franklin County, Ohio, on STATE v STICKLES, 57 Oh App 3d, 98, directly opposite to that of the Court of Appeals at Hamilto County, as PUBLISHED, see Appendix . E

Judgment Entry of Court of Common Pleas, of Hamilton County No A908260, on 19 March 92, see Appendix . . . . F

Entry by Hamilton County Municipal Court of Order for Green Township to remove automobiles and other property from Petitioner's premises, 14 Sept 90, Case 90/CRB/6357, see Appendix . . H

Opinion by Court of Appeals of Hamilton County reversing and remanding above Municipal Court Order, see Appendix G

JURISDICTION

The Jurisdiction of this Court is invoked pursuant to Supreme Court Rule 10 .1. (b) When a State Court of last resort has decided a federal question in a way that conflicts with the decision of another State Court of last resort; also Rule 13 stating that this Petition is filed within 90 days of the date of the last decision.

Petitioner also invokes jurisdiction of this Court to correct lower court decisions and reverse Judgment under the Constitutional Rights to Peaceful Enjoyment of Property, Pursuit of Happiness,

to Due Process and Fair Compensation where property is taken, Equal Protection under Law; and Protection from Ex Post Facto prosecution, Unreasonable Search & Seizure, without Search Warrant, Discrimination; and Violation by the Respondents of Ohio's Collector's Car Law, Ohio R. C, 4513.65, 2d par: "NO POLITICAL SUBDIVISION . . . SHALL PREVENT THE STORAGE . . . OF COLLECTORS' VEHICLES ON PRIVATE PROPERTY . . ." which is really a special emphasis of the rights to peaceful enjoyment of one's property, and pursuit of happiness.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

OHIO R.C.4513.65: NO POLITICAL SUBDIVISION SHALL PREVENT A PERSON FROM STORING OR KEEPING, OR RESTRICT HIM IN THE METHOD OF STORING OR KEEPING, ANY COLLECTORS' VEHICLE ON PRIVATE PROPERTY WITH THE PERM SSION OF THE PERSON HAVING THE RIGHT TO THE POSSESSION OF THE PROPERTY: EXCEPT THAT A POLITICAL SUBDIVISION MAY REQUIRE A PERSON HAVING SUCH PERMISSION TO CONCEAL, BY MEANS OF FENCES, BUILDINGS, ... AND

ORC 4501.01(F) reads, in part:

'COLLECTOR'S VEHICLE' MEANS ANY MOTOR VEHICLE OR AGRICULTURAL TRACTOR OR TRACTION ENGINE OF SPECIAL INTEREST HAVING A FAIR MARKET VALUE OF ONE HUNDRED DOLLARS OR MORE, WHETHER OPERABLE OR NOT, THAT IS OWNED, OPERATED, COLLECTED, PRESERVED, RESTORED, MAINTAINED OR USED ESSENTIALLY AS A COLLECTORS' ITEM, LIESURE PURSUIT, OR INVESTMENT, BUT NOT

AS THE OWNER'S PRINCIPAL MEANS OF TRANSPORTATION.

SAID STATUTES ARE REAFFIRMED IN THE ONLY CASE LAW FOUND ON THIS SUBJECT, STATE v STICKLES, 57 Oh App3d 98

U. S. CONSTITUTION: Article 1, Sec 9: NO . . .EX POST FACTO LAW SHALL BE PASSED. (Petitioner's cars had been there up to 45 years).

ARTICLE V: NO PERSON . . . SHALL BE DEPRIVED OF . . . PR PERTY, WITHOUT DUE PROCESS OF LAW: NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

ARTICLE VII: IN SUITS AT COMMON LAW WHERE THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT TO TRIAL BY JURY SHALL BE PRESERV . . . No jury trial, nor waiver thereof, occurred in this case.

ARTICLE VIII: . . . NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.
It was unusual and extremely cruel to

Destroy and take from an 80 year old collector his lifetime collection.

ARTICLE IV: Guarantees, THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS & EFFECTS AGAINST UNREASONABLE SEARCH AND SEIZURE SHALL NOT BE VIOLATED: AND NO WARRANTS SHALL ISSUE BUT ON PROBABLE CAUSE, SUPPORTED BY OATH OF AFFIRMANCE & PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

STATEMENT OF THE FACTS

For 45 years, Petitioner had been using his commercially zoned land, in Green Township, Hamilton County, Ohio, for a Trailer Park and storage of 100 of the World's finest automobiles, dating from 1918 to '74, when he was sent a letter from the Board of Green Township Trustees ordering him to remove all these cars, plus 5 mobile homes, within 7 days; also 2 garage buildings.

Although Pet'r was well aware of his rights, having so used this land since before zoning, and the Ohio R. C. 4513 .65, 2nd par., which provides that:

"NO POLITICAL SUBDIVISION . . SHALL PREVENT THE STORAGE . . OF COLLECTOR'S VEHICLES ON PRIVATE PROPERTY . . .," setting fines and imprisonment for any one who DOES PREVENT such storage, and though almost all the vehicles were obscured from public view, he tried to be cooperative, and began to move out the cars; but by the first week was able to remove only 5 (the problem being not the transport of the cars, but to find other space as secure, and established for such use, legally, as his own . So he wrote the Township, assuring them he would remove all if they would give him enough time.

They refused any extension, so he filed a Complaint, in Common Pleas Court, either for a Restraining Order, or for loss of the cars, if they took

them, and his use of the land.

The Township complained to the Municipal Court, presented a 17 minute video tape, though it had been taken without search warrant, and was granted an order authorizing them to remove all the cars, which they promptly proceeded to do, hastily, using heavy excavating equipment, badly damaging them and completely destroying the mobile homes.

By well after the due date, the Township had failed to answer the Petitioner's Common Pleas Complaint of Violation of his Constitutional Rights so he filed a Motion for Default Judgment. The Tsp responded with a Motion to Strike Pet'rs Complaint, on ground that it was not signed. But verification in the Record showed the Complaint was not only signed, but Pet'rs signature was Notarized, since the Complaint included an affidavit.

The Tsp never did file any Request

for Leave to file their Answer, nor, even to THIS date, any believeable excuse for their default, which is a necessary pre requisite, according to the Rules, for the grant of such leave; but they could not, of course, since they'd already fil ed the false reason.

And since the Tsp had given Pet'r only 7 days in which to move 100 cars, 5 mobile homes, etc., and had refused him any more time when he needed it, and since they had 28 days, in which all they had to do was to file a 10 word denial, if they had been granted the ex tra time, and not this Pet'r, the ine qualityof this kind of justice would have been too obvious.

But without proper process, and without a hearing, the C. P. Court de nied the Default Judgment, never heard Pet'r's Complaint; though the Tsp filed a Counterclaim for $240,000. against Pet'r as their alleged costs in their

seizure and destruction of Petitioner's property, and they were granted a Judg ment for $64,000; which they have certified to the County Treasurer who at this time is foreclosing Pet'r's land and selling it for satisfaction thereof.

This $64,000. judgment was entered on 19 Mar 92, EVEN THOUGH THE ORDER BY THE MUNICIPAL COURT WHICH AUTHORIZED THEM TO SEIZE THE CARS, etc., WAS REVERSED BY APPEALS COURT on 21 June 91, AND NEVER RETRIED.

PET'R PROMPTLY APPEALED THE JUDGMENT, AND DISMISSAL OF HIS CLAIM WITH OUT HEARING, ON THE PROPOSITION THAT IF THE RIGHT TO TAKE THE CARS, ETC., WAS FINALLY REVERSED, THE RIGHT TO COMPENSATION TO THE TOWNSHIP FOR THEIR IMPROPER ACTION MUST ALSO BE LOST.

BUT THIS APPEALS COURT AFFIRMED THE JUDGMENT, AND THE DISMISSAL OF PET-'R'S COMPLAINT on 1 Dec 93.

APPEAL TO THE SUPREME COURT OF

OHIO, No 94 193, was duly pursued, but they overruled the Motion to Direct the Appeals Court to Certify their Record, on 27 Apr 94. Denial of Rehearing was entered by that Court on 8 June 94, in SUPREME COURT OF OHIO, Case No 94 193, KARL KLEVE, Appellant, v BOARD OF GREEN TOWNSHIP TRUSTEES, Appellee.

SUMMARY OF THE VARIOUS STAGES IN THE PROCEEDINGS, WITH PAGE Nos in APPENDIX:

		Page
14 Sep 90	MUNICIPAL COURT ORDER for SEIZURE of CARS, No 90CRB 6357	H
21 Jun 91	APPEALS COURT, REVERSAL OF MUNICIPAL COURT, No C900636&7	G
19 Mar 92	COMMON PLEAS COURT, Granting $64,000. JUDGMENT TO TSP,A908260	F
1 Dec 93	APPEALS COURT, Affirming C. P. court JUDGMENT, C 920377	D
3 Jan 94	APPEALS COURT, Overruling of REQUEST for RECONSIDERATION	C
27 Apr 94	SUPREME COURT OF OHIO, OVERRULING OF APPEAL 94 193	B
8 Jun 94	SUPREME COURT OF OHIO -	

DENIAL OF REHEARING, 94 193 A

The Federal questions sought to be reviewed were raised vocally in Municipal Court, 31 Aug 90, and denied by entry of that date allowing seizure of the vehicles, etc, (to be REMOVED AS DEBRIS) AND IN APPEALS COURt BY BRIEF AND ASSIGNMENT OF ERROR, Case C900636&7, and DISPOSED of by REVERSAL, 21 Jun 91, of the TOWNSHIP'S RIGHT TO SEIZE THE CARS. RAISED IN C. P. COURT BY MOTION TO DISMISS THE TSP CLAIM AS RES JUDICATA, . . DENIED ON 19 Mar 92.
RAISED IN APPEALS COURT CASE C-920377, JUDGMENT OF AFFIRMANCE 1 Dec 93.
RAISED IN SUPREME COURT OF OHIO BY MEMORANDUM IN SUPPORT OF JURISDICTION . . Overruled 27 Apr 94.

(j) A STATE COURT OF LAST RESORT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT.
See STATE V STICKLES, 57 Oh App 3d 98 IN APPENDIX . . . . . E.

CONFLICT BETWEEN STATE V STICKLES and

STATE V KLEVE:	STATE V STICKLES:
WHERE: Green Township Cincinnati Ohio	Jackson Township Columbus, Ohio
NUMBER OF CARS: 102	427
MAKES: Rolls Royce, Packard, Ferrari, Lincoln, Cadiilac	Pontiacs, only
YEAR MODELS: 1918/74	1956/9
CHARGE: Nuisance,'90	Nuisance, '88
DECISION: AGAINST KLEVE / FOR STICKLES	
DISPOSITION: COLLECTION / SEIZED, SCRAPPED	STICKLES ALLOWED TO KEEP CARS
DEFENSE PLEA: ORC 4513.65/	ORC 4513.65
JUDGMENT: $64,000. AGAINST/	NONE

REASONS FOR GRANTING THE WRIT

One Appeals Court in Ohio decided against Kleve, directly oppositely from the previous decision for Stickles, in the most similar cases one could find.

This is one of the reasons, provided in Supreme Court Rule 10,.1.(b). as one of the criteria for acceptance.

Also, this was a clear violation of Ohio R.C. 4513.65: NO POLITICAL SUBDIVISION SHALL PREVENT . . A PERSON FROM STORING . . .ANY COLLECTOR'S VEHICLE ON . . PRIVATE PROPERTY . . which commends and protects collectors of vintage cars more firmly than any other of all human activities. They also violated U. S. Constitutional Rights to Peaceful Enjoyment of Property, Pursuit of happiness,due Process of Law and Fair Compensation in the taking of property for public benefit; protection from unreasonable Search and Seizure, Invasion of Privacy, Penalizing and dictating personal tastes, etc. And it cer-

tainly is cruel and unusual punishment for them to have taken and scrapped the irreplaceable lifetime collection of an 80 year old man.

And they are even now foreclosing and taking the land itself, even though the original order granted by the Municipal Court, to take the cars, etc., was finally reversed, so that it is no longer fair and equitable that the Township still collect $64,000. from Kleve awarded on the assumption that their right to take them would stand.

In their MEMORANDUM DECISION AND JUDGMENT ENTRY of 1 Dec 93, The Appeals Court filled many pages with comment on refuse, garbage, debris, junk, even mosquitos, none of which were issues in this litigation. Kleve was always quite willing that if any of these could be found on his premises, the Tsp could take them. Even removal of the vehicles was not contested, but in fact Kleve was removing them, himself and would

have completed this had they only allow ed him enough time. It was only when they stood firm on their physically impossible time limit that Kleve filed suit, and this was against taking his cars, so particularly and emphatically protected by Ohio's Collector Car stat ute, RC4513.65. Garbage, etc., was not an issue. Appeals Court's Decision ac cepted the remote hypothesis that these cars, standing for decades without fuel nor batteries, constituted a fire hazard compared to the hundred million running cars WITH fuel, WITH batteries, and sub ject to all the road hazards, collision and upset, etc.

Zoning, also discussed in the Decis ion, also was never an issue; any time that department questioned this, they were fully satisfied when apprised that Kleve's usage had been established well before zoning was enacted.

Saving his car collection was Kleve' s issue.

The Tsp. was allowed to evade default judgment by being untruthful to the court, claiming the Complaint was not signed; and that they never received the Motion for Default Judgment, when the Record shows that well after it was due, they responded to it the next day after it was filed and personally served.

Appeals Court rejects Kleve's claim of error in the denial of his Constitutional Rights because there was no Transcript of that; the reason for no transcript was simply that there were no PROCEEDINGS on that issue. The C.P. Court heard only the Tsp's Counterclaim Notices of some hearings were delayed by being misaddressed.

CONCLUSION

If it please the Court, to vacate the unfair Judgment against Pet'r and order replacement of his car collection or dollar value thereof, including the mobile homes.

THE SUPREME COURT OF OHIO

1994 TERM

To wit: June 8, 1994

Karl Kleve
Appellant

v

Board of Green Township
Trustees,
Appellee

Case No 94 193

REHEARING ENTRY

IT IS ORDERED by the Court that Rehearing in this case be, and the same is hereby, denied.

(Court of Appeals No C920377)

Signed by

THOMAS J. MOYER

Chief Justice

THE SUPREME COURT OF OHIO

1994 TERM

To wit April 27, 1994

Karl Kleve

Appellant : Case No 94 193

v : ENTRY

Board of Green Township

Trustees

Appellee

Upon consideration of the Motion for an Order directing the Court of Appeals for Hamilton County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion fee, $40.00, paid by Karl Kleve.

(Court of Appeals No C920377)

Signed by:

THOMAS J. MOYER

Chief Justice

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

KARL KLEVE

Appellant,

vs

BOARD OF GREEN

TOWNSHIP TRUSTEES

: APPEAL NO C 920377

ENTRY OVERRULING

APPLICATION

This cause came on to be considered upon the application of the appellant for reconsideration, and

The Court being fully advised in the premises finds that said application is not well taken and that the same ought to be and hereby is overruled.

TO THE CLERK: (COPIES SENT TO ALL

ENTER UPON THE COUNSEL)

JOURNAL OF THE COURT

1/3/94

PER ORDER OF THE COURT

BY: Signed by: H. T. Klusmeier

Presiding Judge

C

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

CLERK ORDERED TO

ENTER UPON THE JOURNAL

DEC 1, 1993

Court of Appeals

KARL KLEVE

Plaintiff appellnt

APPEAL NO C 920377

TRIAL NO A 909260 (sic)

vs

MEMORANDUM DECISION

AND JUDGMENT ENTRY

BOARD OF GREEN TOWNSHIP TRUSTEES

Defendant appellees

PRESENTED TO THE

CLERK OF COURTS

FOR FILING DEC 1

1993

Karl Kleve, pro se, 3077 Jadaro ct, Cincinnati, Ohio 45248

Charles Mitchell, Esq, No 0019060, 6060 (sic) Harrison avenue, Suite Seven, Cincinnati, Ohio 45248, for Defendant Appellee.

PER CURIAM.

This cause came on to be heasrd upon the appeal, the record filed herein,

the briefs, and arguments. We have sua sponte removed this cause from the accelerated calendar.

The Plaintiff appellant, Karl Kleve, appeals from the order of the court of common pleas granting judgment on the counterclaim of the defendant appellee, the Board of Green Township Trustees, in an action for injunctive relief originally brought by Kleve to stop the township from abating nuisances which had been declared to exist on his property. On its counterclaim, the township was determined by the court of common pleas to have abated the nuisances on Kleve's property and was rendered a money judgment for its expenses. In his pro se appeal, Kleve assertsfour assignments of error. None have merit.

A brief procedural history of this case, as gleaned from the complaint and counterclaim, is informative. As stated in his complaint, Kleve is the owner/trustee of certain premises in

Green Township, whereupon he stores vehicles which he describes as " specimens of the finest cars ever built, from 1909 on " On July 12, 1989, the Green Township Fire Department determined that conditions on the property, including the buildings, trailers and structures thereon, were nuisances as well as fire and safety hazards. On April 26, 1990, the Rural Zoning Commission of Hamilton County issued a notice to Kleve that a recent inspection had shown that he was storing junk vehicles and trailers in violation of the applicable zoning regulations. (A similar notice was issued on June 7, 1990.) On May 2, 1990, the District Board of Health of Hamilton County issued Kleve a notice ordering him to abate certain conditions on the property, i.e., mosquitos, mosquito breeding and mosquito breeding sources, tires, metal waste, junk, abandoned vehicles, abandoned mobile homes and anything contributing to mosquito

breeding.

On July 9, 1990, the township's Board of trustees, after viewing a videotape of the premises made by the fire department, declared conditions on the property to be a nuisance under R C 505.86 and 505.87. Kleve was mailed a notice of this determination and advised that he had seven days to abate, control, or remove vegetation, garbage, refuse and debris,(CARS NOT MENTIONED) . . and thirty days to remove structures on the property deemed to be insecure, unsafe and structurally defective. Further, Kleve was advised that if the structures were not removed within the allotted time, the township would take the necessary action at his expense.

On August 13, 1990, the District Board of Health of Hamilton County declared the property to be a public nuisance.

Kleve, according to the Township, failed to abate the nuisances; therefore,

on September 17, 1990, the township commenced the abatement. In order to do so, the township contracted with local towing services to remove approximately ninety vehicles and trucks from the property. The vehicels were removed to two locations owned by the township and thereafter the township demanded that Kleve remove them to a location of his choice. According to the township, Kleve not only refused this demand and repeated similar demands, but he also moved onto the township's property a mobile home shell without the township's permission.

Kleve's complaint prayed for a permanent injunction or temporary restraining order against "confiscation" of his cars and mobile homes, or, alternatively, for judgment of $5,720,000.

The township, in its counterclaim, prayed that its abatement of nuisances be declared lawful and in compliance

with R.C.505.
86 and 505.87; that Kleve be ordered to remove his vehicles and mobile homes from the township's premises; and that a judgment be entered in favor of the township for its costs in the removal and storage of the vehicles.

After a trial on the matter, the court of common pleas found that the property was maintained in a manner that constituted a nuisance, that the township determined such and served notice on Kleve; that Kleve, as he admitted on cross-examination had been personally served with such notice; that such notice was in compliance with law; that Kleve failed to abate the nuisance of which he was given notice; that the township had expended $36,271. .84 of public money to abate the nuisance; that the township expended $1,750. to appraise the vehicles to determine if they were of any value; and that Kleve was further liabel to the town-

ship for $23,905, being the reasonable value of the storage which the township provided his vehicles, vehicle frames, mobile homes, and mobile home shells.

In his first assignment of error, Kleve asserts that the trial court erred to his prejudice by setting, trying, and deciding the counter-complaint of appellees despite the fact that said cause had already been heard, and decided in Municipal Court. Kleve argues that a prior decision in municipal court, which was reversed on appeal by this court bars the township's counterclaim on the basis of res judicata. We have reviewed our decision in the case cited by Kleve, City of Cincinnati v Kleve, (June 21, 1991 , Hamilton App Nos C 900636, 7, unreported, and do not find that it warrants application of the doctrine of res judicata. Kleve's first assignment of error is, therefore, overruled.

In his second assignment of error, Kleve asserts that the trial court erred

in denying his motion for default judg ment despite the fact that their only attempted excuse, that appellant had not signed his complaint, was an absolute untruth. Initially, we note that the trial court did not explain its overruling of the motion. T,D.19. In response to Kleve's assignment, the township argues that it never received a copy of the motion or notice of hearing, and that this alleged failure of Kleve to strictly comply with Civ. R. 55 would be cause enough for the trial court to have denied Kleve'd motion. Moreover, the township cites Civ. R. 55(D) for the proposition that default judgment cannot be entered against a political subdivision of the state unless there is satisfactory proof to support judgment. While we cannot on this record validate the township's claim that it did not receive notice of Kleve's motion for default judgment,

we agree that Civ.R. 55(D) provides adequate support for the trial court's overruling of the motion. Thus, Kleve's second assignment of error is overruled.

In his third assignment of error, Kleve asserts that the trial court erred to his prejudice "in ruling favorably to the township for their having violated appellant's constitutional rights, notably his freedom from unreasonable search and seizure." Under this assignment, Kleve further argues that his rights to peaceful enjoyment if (sic) of one's property, invasion of privacy, taking of property without due process, taking of proprety without fair compensation, denial of right to life, liberty and pursuit of happiness, prohibition of ex post facto prosecution, were all violated. Although Kleve seeks to validate this assignment by reference to a prior municipal court proceeding, he has certified only a partial transcript of the proceedings in the common

pleas court, omitting testimony that he deemed improper. Given the fact that we have been given an incomplete record, we hold that Kleve has not established the constitutional violations of which he complains, nor do we agree that even if such violations were manifest they would provide the remedy he seeks in a civil case.

In his fourth assignment of error, Kleve asserts that he has been denied due process of law throughout the proceedings in the court of common pleas. Upon review of the record, however, we find that the assignment of error is not substantiated.

Accordingly, the judgment below is affirmed.

And the court, being of the opinion that there were reasonable grounds for this appeal, allows no penalty. It is further ordered that costs be taxed in compliance with App. R. 24, that a copy of this Memorandum Decision

AND Judgment Entry shall constitute the mandate, and that said mandate shall be sent to the trial court for execution pursuant to App.R.27.

Exceptions noted.

KLUSMEIER, P.J., DOAN and HILDEBRANDT JJ.

THE STATE, EX REL. MILLER, PROSECUTING ATTORNEY, ET AL, APPELLANTS, v STICKLES A.K.A. DICK PONTIAC, APPELLEE.

Cite as State, ex rel. Miller, v Stickles (1988), 57 Ohio App. 3d 97.

Motor Vehicles R.C.4501.01(F) Collector's vehicles Zoning Collector's vehicle exempt from R.C.4513.65 regulation of motor vehicle storage - Valid and marketable title not relevant to the issue of collector's vehicle identity.

O.Jur 3d Automobiles SS 2, 302.

Collector's vehicles are exempt from R. C. 4513.65, which defines and regulates storage of motor vehicles.

R. C. 4501.01(F) and 4513.65 do not include a requirement that a valid and marketable title must be vested in the person possessing the vehicle to be classified as a collector's vehicle.

Marketable title is not relevant to the issue of a collector's vehicle's identity. No 88AP 525 Decided December 27, 1988.

APPEAL: Court of Appeals, Franklin County.

Michael Miller, prosecuting attorney, and Jeffrey L. Glasgow, for appellant.

Richard Stickles, pro se.

REILLY, J. This is an appeal from a judgment of the Franklin County Court of Common Pleas.

Appellants, the state of Ohio, ex rel. Miller et al, filed an action to enjoin appellee, Richard Stickles, aka Dick Pontiac, from maintaining a nuisance on his premises at State Route 665 in Jackson Township in southern Franklin County. The referee conducted a view of the premises, which is approximately five acres of land, upon which there are situated a large number of inoperable automobiles, buses and other miscellaneous items. The majority of the automobiles are 1956, 1957, 1958 and 1959 Pontiacs.

At the conclusion of the hearing, the court found that all of the auto-

mobiles and buses were collector's vehicles and were exempt from the operation of the Jackson Township Zoning Resolution, R. C. 4513.65.

Appellants appealed the trial court 's decision and this court reversed the judgment, and the cause was remanded for a determinati on of the value of the automobiles alleged to be collector's vehicles. This court also ordered the removal of the buses and a step van from the premises since legally they constituted junk. Further, this court found that it was error for the trial court to find that all of the cars on defendants' property were " Collector's vehicles," as defined in R.C.4501.01(F)

The trial court referred the case to a referee for trial of issues consistent with the remand of this court. The referee rendered a report, which was adopted by the trial court. The court's judgment reads in part:

"Upon consideration of the parties'

memoranda before the court this Court hereby overrules the objections of the Plaintiff and approves and adopts as its own the findings of said Report.

"Accordingly, this Court finds that 399 of the 427 cars on Defendant's property are collector's vehicles pursuant to ORC 4501.01(F) and it is concluded that it is not a requirement of ORC 4501.01(F) that title be in the name of the Defendant."

Appellants advance the following assignments of error:

"The finding that 399 of the automobiles maintained on appellee's premises are collector's vehicles was not proved by a preponderance of the evidence."

Appellant's assignment of error is not well taken. The referee's report was based on a trial, including documentary evidence and testimony, as well as a visit to the site, where four hundred twenty-seven vehicles were seen by the referee, who found that three

hundred ninety-nine of the cars were collector's vehicles.

R.C.4501.01(F) reads, in part:

"'Collector's vehicle'means any motor cehicle or agricultural tractor or traction engine of special interest having a fair market value of one hundred dollars or more, whether operable or not, that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector's item, leisure pursuit, or investment, but not as the owner's principal means of transportation. *** "

Vehicles applicable to the above definition are exempt from R.C.4513.65 which defines and regulates the storage of a motor vehicle held for collector's purposes:

" No political subdivision shall prevent a person from storing or keeping or restrict him in the method of storing or keeping, any collector's vehicle on private property with the permission

of the person having the right to the possession of the property: except that a political subdivision may require a person having such permission to conceal, by means of buildings, fences, *** .

It is noteworthy that, the above code sections do not include a requirement that a valid and marketable title must be vested in the person possessing the vehicle to be classified as collector's vehicles. Marketable title is not relevant to the issue of a collector's vehicle's identity. In any event, the title could be acquired through the established procedures of the Bureau of Motor Vehicles.

The evidence, including the testimony of James Molloy, a qualified expert on collectible vehicles, as well as data from the trade magazine "Old Cars Guide," supports the referee's recommendation and the judgment of the trial court. Hence, the finding that

three hundred ninety nine of the automobiles maintained on defendant's property are collector's vehicles was proved by the preponderance of the evidence.

Appellant's assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

McCORMAC and LYNCH, JJ, concur.

JOHN J. LYNCH, retired, of the Seventh Appellate District, was assigned to active duty pursuant to Section 6(C) , Article IV, Constitution.

Charles e. Mitchell, M 412, 19060
Trial attorney for Defendant

COURT OF COMMON PLEAS

HA MILTON COUNTY, OHIO

ENTERED MAR 19, 1992

IMAGE 15

KARL KLEVE

Plaintiff

vs

BOARD OF GREEN TOWNSHIP TRUSTEES,

Defendant

vs

KARL KLEVE, Trustee

Third-party-defendant

Case No A9008260

Judge Mathews

JUDGMENT ENTRY DISMISSING PLAINTIFF's COMPLAINT AND GRANTING JUDGMENT TO DEFENDANT

Trial commenced in this action on August 2, 1991, and continued in progress with testimony had on numerous occasions. Plaintiff/Third-Party-Defendant (hereinafter referred to in the singular as Mr. Kleve.) has been granted numerous continuances herein. Trial was scheduled to reconvene on January 14, 1992.

Mr. Kleve, although being duly notified of said date, failed to appear to go forward with his arguments. Over objection of counsel for Defendant (hereinafter referred to as Green Township) this Court continued trial to February 4, 1992. On February 4, 1992, Mr. Kleve again failed to appear for trial. After allowing Mr. Kleve in excess of one (1) hour beyond the scheduled time to commence trial, and upon Mr. Kleve's failure to appear, this Court permitted counsel for Green Township to present closing arguments.

IT IS HEREBY FOUND, that notices of the trial dates of January 14, 1992 and February 4, 1992 were served on Mr. Kleve and Green Township pursuant to rule.

IT IS FURTHER FOUND, based upon the testimony of witnesses for Green Township, including: Wayne Tiemeyer, Building Inspector for the Hamilton County Building Department; Irvin Bolinger, DVM

of the Hamilton County Board of Health, Robert J. Weitzel, Green Township Fire Chief; Captain Edward Thomas of the Green Township Fire Department; and Thomas A. Maley, Green Township Administrator and former Hamilton County Health Commissioner, that the premises owned by Karl Kleve, Trustee, situated within the geographical boundaries of Green Township, to wit: Hamilton County Auditor's Parcels 550 121 401, 402, 456, 500, and 519: were maintained by Mr. Kleve in a manner which constituted a nuisance pursuant to the provisions of Section 505.86 and 505.87 of the Ohio Revised Code;

IT IS FURTHER FOUND, that the Board of Trustees of Green Township, on July 9, 1990, after hearing reports from Wayne Tiemeyer, Irvin Bolinger, DVM, Robert J. Weitzel, Edward Thomas and Thomas A. Maley, and after reviewing a videotape seventeen (17) minutes in length of the subject premises prepared

by the Green Township Fire Department, and after personal inspection of the subject premises by each Trustee, unanimously held that the subject premises contained excessive vegetation, garbage, refuse and debris; and that the buildings, mobile homes and other structures located thereon were insecure, unsafe, structurally defective and unfit for human habitation;

IT IS FURTHER FOUND, that on August 15, 1990, Green Township caused to be mailed to Mr. Kleve, by certified mail, notice that the manner in which he maintained the subject premises constituted a nuisance. Said notice further ordered Mr. Kleve to abate, control or remove the excess vegetation, garbage, refuse and debris from the subject premises within 7 days (7) after receipt of said notice. Said notice further provided that should Mr. Kleve fail to abate the nuisances, the Board of Trustees would abate the nuisances pursuant

to Sections 505.86 and 505.87 of the Ohio Revised Code, and certify the costs of such abatement to the Hamilton County Auditor for the purpose of creating a lien on the subject premises for the total amount of such abatement costs:

IT IS FURTHER FOUND, that Mr. Kleve, upon cross examination during trial by counsel for Green Township admitted that on August 16, 1990, he was personally served with a copy of the aforementioned notice;

IT IS FURTHER FOUND, that said notice was issued in compliance with the applicable provisions of the Ohio Revised Code;

IT IS FURTHER FOUND, that Mr. Kleve failed to abate the nuisances as ordered by Green Township; and that on September 17, 1990, being more than thirty (30) days after service of the notice upon Mr. Kleve, Green Township, pursuant to Sections 505.86 and 505.87 of the Ohio

Revised Code began to abate the nuisances on the subject premises;

IT IS FURTHER FOUND, That Green Township has fully complied with the provisions of Sections 505.86 and 505.87 in the abztement of the nuisances on the subject premises;

IT IS FURTHER FOUND, THAT Green Township expended Thirty Six Thousand Two-Hundred Seventy-One and 84/100 Dollars ($36,271.84) of public funds to abate the nuisances on the subject premises, as well as tow certain vehicles from one township location to another; and that all of said expenses were reasonable and necessary to fully abate said nuisances;

IT IS FURTHER FOUND, that Green Township expended One Thousand Seven Hundred Fifty Dollars ($1,750.00) of public funds for an appraisal to determine if the vehicles owned by Mr. Kleve were of value; and that said expenditure was reasonable and necessary.

IT IS FURTHER FOUND, that Green Township expended Three Thousand Three Hundred Ninety Seven and 72/100 Dollars ($3,397.72) of public funds for the fees of the Receiver appointed herein; and that said expenditure was reasonable and necessary;

IT IS FURTHER FOUND, that Green Township caused to be stored on its property ve hicles, vehicle frames, mobile homes and mobile home shells totalling over twenty three thousand nine hundred five (23,905) vehicle storage days; that said storage was for the potential benefit of Mr. Kleve; and that the reasonable value of said storage is Twenty-Three Thousand Dollars ($23,000) ;

IT IS FURTHER FOUND, that the premises from which the nuisances were abated is owned by Karl Kleve, Trustee, and that the vehicles, vehicle parts, mobile homes, mobile home frames and many other items of property removed from the subject premises were the property of Karl

Kleve. Therefore, judgment shall be granted jointly and severally against Karl Kleve, Trustee, and Karl Kleve;

IT IS FURTHER FOUND, that this Court has previously ruled on the relief sought in Plaintiff's Complaint with respect to a permanent injunction and temporary restraining order; and that Plaintiff has failed to amend his complaint or offer other evidence in support of his claim for monetary damages;

IT IS FURTHER FOUND, that Green Township's Motions for Contempt and Sanctions against Mr. Kleve for failing to attend a deposition scheduled by him, are without merit;

IT IS FURTHER FOUND, that Green Township's Motion to strike certain portions of the Answer filed on behalf of Mr. Kleve is without merit;

IT IS FURTHER FOUND, that Mr. Kleve's Motion for Return of Property is without merit;

IT IS FURTHER FOUND, that Mr. Kleve,s

Motion for Continuance, Stay or Dismissal is without merit.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. Plaintiff's Motion for Return of Property is overruled.

2, Plaintiff's Motion for Continuance, Stay or Dismissal is overruled.

3. Defendant's Motions for Contempt and Sanctions are overruled.

4. Defend nt's Motion to Strike portions of Plaintiff's Answer is overruled.

5. Plaintiff's Complaint against Defendant is dismissed, with prejudice.

6. Judgment is granted in favor of defendant, on its Amended Counterclaim, against Plaintiff and Third-Party-Defendant, jointly and severally, in the amount of Thirty Six Thousand Two Hundred Seventy-One and 84/100 Dollars (36,271.84) for its expenditures incurred in the abatement of nuisances on the subject premises; in the amount of Twenty Three Thousand Dollars. ($23,000.00)

for storage fees; in the amount of One Thousand Seven Hundred Fifty Dollars ($1,750.00) expenditures for appraisal fees; and in the amount of Three Thousand Three Hundred Ninety-Seven and 72/100 Dollars ($33, 397.72) for the costs it has paid to the Receiver appointed herein the total of which is Sixty-Four Thousand Four Hundred Nineteen and 65/100 Dollars ($64,419.56 ; together with interest thereon from the date of journalization of this Judgment Entry, at the rate of ten percent (10%) per annum.

7. Plaintiff/Third-party-Defendant is further ordered to pay the costs of this action.

Signed by William S. Mathews

Judge.

Signed by Charles E. Mitchell

M 412 19060

Trial Attorney for Defendant

COURT OF COMMON PLEAS ENTER. THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH WHLL BE TAXED AS COSTS HEREIN. F10

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

CITY OF CINCINNATI APPEAL NO C 900636

PLAINTIFF APPELLEE C 900637

vs TRIAL NO 90CRB6357

KARL KLEVE 90CRB7550

DEFENDANT APPELLANT JUDGMENT ENTRY

These appeals, having heretofore been placed on the accellerated calendar, are being considered pursuant to App.R.11.1 (E and Local Rule 12 and shall not be considered controlling authority except as provided in Rule 2(G (1 of the Su preme Court Rules for the Reporting of Opinions.

Wherefore, the first assignment of error is sustained because the trial Court erred in sentencing appellant, who was not represented by counsel, to a period of incarceration. State v Kleve (1981 , 2 Ohio App 3d 407, 442 N.E.2d 483; Crim.R.44(B . As the Su

preme Court stated in State v. Tymcio (1975). 42 Ohio St. 2d 39, 325 N.E.2d 556, Certiorari denied (1975) 423 U.S. 993, 96 S.Ct.419:

To make the right to the assistance of court appointed counsel a factual reality, the determination of need must turn, not upon whether an accused ought to be able to employ counsel, but whether he is in fact able to do so. Absent a knowledgeable and intelligent waiver, a defendant may not be imprisoned unless he was represented by counsel at his trial.

The second assigmment of error is overruled because the record does not support appellant's claim of bias and prejudice on the part of the trial court.

The third assignment of error is overruled because the record

does not demonstrate the error of which appellant complains.

The fourth assignment of error is overruled because the sentences imposed upon appellant were within the limits provided by law.

Therefor the judgments of the trial court are reversed and the causes are remanded for a new trial and for further proceedings consistent with law and this judgment Entry.

It is ordered that a certified copy of this Judgment Entry shall constitute the mandate to the trial court pursuant to App. R. 27.

GORMAN, P.J. KLUSMEIER and UTZ, JJ.

To the Clerk: Enter upon the Journal of the Court on Jun 21, 1991 per Order of the Court /Signed/ Gorman, J.

Presiding Judge

Case no 90/CRB/6357,8. HAMILTON COUNTY

CH NO 346049 MUNICIPAL COURT

DEFENDANT KLEVE, Karl ENTRY

Sec viol 1201 47 CHARGE Fire Code Viol

Date of arrest 3/01/1915

PROS WIT Carson, John

PLEA. NG FINDING G.

Sept 14, 1990 All Dept heads, Wm Sites, Mitchell, defendant and stepson, Mark Hankins present: Reviewed Video of Green Township propeprty.

1. Order; Clean up order on Green Township property previously ordered (Aug 31, 1990) to commence on Sept 14th 1990, to commence on Sept 17th, 1990 as per nine (9) point program as set forth by Charles Mitchell. Whole Automobiles to be removed to Green Township Garage on Glenway Ave.

2. Order: Defent will have until Sept 21st 1990 to remove debris from 3081 Percy Ave.; After Sept 21st 1990, CAPP instructed to remove all debris from inside and outside of said premises.

H /signed/ R W

GREEN TOWNSHIP

5581 Cheviot Road Cincinnati,Ohio 45247

513 385 3283

August 15, 1990 CERTIFIED MAIL

Mr. Karl Kleve

2887 Harrison Avenue

Cincinnati, Ohio 45247

Re: Harrison Avenue Property Accross from School Section Road

Dear Mr. Kleve:

Please be advised that pursuant to Section 505.87 of the Ohio Revised Code, notice is hereby given you to remove from the above premises all vegetation, garbage, refuse, an other debris. Included in other debris are the trailers on the premises and all vehicles and vehicle parts.

The Board of Green Township Trustees has declared your property to be a nuisance as a result of its inspection of the premises, orders issued by the Green Township Fire Department through the Ohio Fire Marshall, zoning violations and Health Dept violations.

If such vegetation, garbage, refuse or debris is not abated, controlled, or removed from your premises, or if provision for its abatement, control, or removal is not made within seven days from your receipt of this notice, the Board of Trustees of Green Township will provide for the abatement, control, or removal, and any expenses incurred by the Board in performing that task will be entered upon the tax duplicate and will be a lien upon the land from the date of entry.

Further, please take notice that pursuant to Section 505.86 of the Ohio Revised Code the Green Township Fire Department, after review of the premises, has declared the buildings and other structures on the premises to be insecure, unsafe and structurally defective.

EXHIBIT D